

No. 2022-1642

United States Court of Appeals
for the Federal Circuit

CARAVAN CANOPY INTERNATIONAL, INC.,

Appellant

v.

Z-SHADE CO., LTD., COSTCO WHOLESALE CORPORATION, LOWE'S
HOME CENTERS, LLC, SHELTERLOGIC CORP.,

Appellees

*Appeal from the Patent Trial and Appeal Board of the United States Patent and
Trademark Office in IPR 2020-01026*

**MOTION FOR LEAVE TO ACCEPT LATE-FILED JOINT
APPENDIX**

STEPHEN M. LOBBIN, ESQ.
SML AVVOCATI P.C.
888 Prospect Street, Suite 200
La Jolla, CA 92037
(949) 636-1391

Counsel for Patent Owner/Appellant

JANUARY 23, 2023

CERTIFICATE OF INTEREST

Pursuant to FCR 28(a)(1) and 47.4, counsel for the Patent Owner/Appellant certifies the following:

1. The full name of every party or amicus represented in the case by me is Patent Owner/Appellant Caravan Canopy International, Inc. (“Caravan”).

2. The name of the real party in interest (if the party named in the caption is not the real party in interest): N/A

3. There is no parent corporation or publicly held corporation that owns 10% or more stock in this entity.

4. The names of all law firms and the partners and associates that have appeared for these parties in the lower tribunal or are expected to appear for them in this court, are as follows: Kyle W. Kellar, Jason C. Martone and Steven French of Lewis Roca Rothgerber Christie LLP.

5. Any case pending in this or any other court or agency that will directly affect or be directly affected by this court’s decision in the pending appeal: N/A

6. Information required by FRAP 26.1(b)-(c) that identifies organizational victims in criminal cases and debtors and trustees in bankruptcy cases: N/A

Respectfully submitted,

Dated: January 23, 2023

/s/ Stephen M. Lobbin

Counsel for Patent Owner/Appellant

Pursuant to Fed. R. App. P. 27 and FCR 28(a)(5), Appellant Caravan moves hereby for leave to file appendix out of time, and respectfully states as follows:

1. On August 15, 2022, Appellees moved for an extension of time to October 6, 2022 in which to file its response brief.
2. Appellees' motion was granted, therefore the deadline for Caravan to file its reply brief was October 27, 2022.
3. Throughout this process, counsel for Caravan worked diligently to prepare the appendix for filing with this Court.
4. Caravan did not file the appendix in accordance with Fed. Cir. R. 30(a)(2), which provides that "if the appellant does not file a reply brief, the appendix must be served and filed within the time for filing the reply brief." Even though the appendix was complete and ready to be filed, because of the press of business in other matters including summary judgment proceedings and trial preparation, Caravan was remiss and did not timely file the appendix.
5. On January 20, 2023, the court dismissed the appeal for failure to file the appendix.
6. It was at this time that Caravan discovered its inadvertent mistake, and Caravan immediately filed the Appendix on January 20, 2023.
7. Granting this motion would not prejudice Appellees. Rather, denying leave as requested herein would prejudice both parties, as this Court would be

unable to review citations to the appendix found in both parties' briefs.

8. Caravan has at all times exercised reasonable diligence to comply with the provisions and rules of this Court, and has not previously sought leave to file any documents out of time.

9. Caravan's Certificate of Interest is included herewith.

CONCLUSION AND STATEMENT OF RELIEF SOUGHT

For the foregoing reasons, Caravan respectfully requests that this Court grant leave for, and accept the late filing of, the Joint Appendix filed January 20, 2023.

Respectfully submitted,

January 23, 2023

/s/ Stephen M. Lobbin
Counsel for Plaintiff-Appellant

PROOF OF SERVICE

I hereby certify that on January 23, 2023, I electronically filed the above document(s) with the Clerk of Court using CM/ECF which will send electronic notification of such filing(s) to all registered counsel.

/s/ Stephen M. Lobbin

CERTIFICATE OF COMPLIANCE

This motion complies with the typeface and type style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5) and Rule 32(a)(6), and the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), as it does not exceed 5,200 words.

/s/ Stephen M. Lobbin